Supreme Court, U. S.
FILED
MAR 29 1976
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1975

No. 75-1386

John G. Hadley, Appellant

v.

The State of New Hampshire, Appellee

On Appeal from the
Supreme Court of
the State of New Hampshire

JURISDICTIONAL STATEMENT

Richard G. Smith, *Esquire*
SMITH & ANGELO
Seven Main Street
Jaffrey, New Hampshire 03462
Counsel for Appellant

IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1975

No.

John G. Hadley, Appellant

v.

The State of New Hampshire, Appellee

On Appeal from the
Supreme Court of
the State of New Hampshire

JURISDICTIONAL STATEMENT

Richard G. Smith, *Esquire*
SMITH & ANGELO
Seven Main Street
Jaffrey, New Hampshire 03462
Counsel for Appellant

INDEX

Opinion Below 3
Jurisdiction 4
Question Presented 4
Statutes Involved 4
Statement 4
The Questions Are Substantial 5-6
Appendix A (Copy of Judgment Below) 8-11
Appendix B (Text of Statutes) 12-15

TABLE OF CITATIONS

Frontiero v. Richardson, 411 U.S. 677 (1973) 5
Morey v. Doud, 354 U.S. 457 (1957) 5
Reed v. Reed, 404 U.S. 71 (1971) 5
Royster Guano Co. v. Virginia, 253 U.S. 412 (1920) 5
Salyer Land Co. v. Tulare Lake Basin Water Storage District, 410 U.S. 719 (1973) 5
Sproles v. Binford, 286 U.S. 374 (1932) 6

In the SUPREME COURT of the UNITED STATES

October Term, 1975

No.

John G. Hadley, Appellant

v.

The State of New Hampshire, Appellee

On Appeal from the Supreme Court
of the State of New Hampshire

JURISDICTIONAL STATEMENT

John G. Hadley appeals from a judgment of the Supreme Court of New Hampshire, entered on September 30, 1975, upholding the constitutionality of a statute, and submits this statement to show that the Supreme Court of the United States has jurisdiction over the appeal and that a substantial question is presented.

OPINION BELOW

The opinion of the Supreme Court of New Hampshire is reported in ___ N.H. ___, 345 A. 2d 160 (1975). Copies of the opinion are attached hereto as Appendix A.

JURISDICTION

The suit is one to enjoin the enforcement of a state statute as unconstitutional. The judgment of the Supreme Court of New Hampshire was entered on September 30, 1975, and notice of appeal was filed in that court on December 10, 1975. The jurisdiction of the Supreme Court to review this decision by direct appeal rests upon 28 U.S.C. § 1257 (2).

QUESTION PRESENTED

Whether N.H.R.S.A. § 249:51 violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

STATUTES INVOLVED

N.H.R.S.A. §§ 249:51 and 502-A:17 are set forth in Appendix B hereto.

STATEMENT

John G. Hadley received a summons for violating N.H.R.S.A. § 249:51 by failing to cover a dump truck hauling gravel. Prior to trial in the Peterborough District Court, he moved to dismiss the Complaint, alleging that he was denied equal protection of the laws in that the statute under which he was charged exempts farm vehicles and highway vehicles from its provisions. The appellant also moved that the constitutional

question be transferred to the Supreme Court of New Hampshire pursuant to N.H.R.S.A. § 502-A:17. The motion to transfer was granted on October 21, 1974. On September 30, 1975, the Supreme Court of New Hampshire concluded that the statute was constitutional and remanded the case to the Peterborough District Court.

THE QUESTIONS ARE SUBSTANTIAL

The issue involved in this appeal is whether the appellant has been denied equal protection of the laws under the fourteenth amendment. The penal statute under which the appellant was charged exempts certain similar classes from its purview, even though the exclusion of these groups bears no substantial relation to the object of the legislation. Royster Guano Co. v. Virginia, 253 U.S. 412 (1920). The purpose of the statute is to enable the state to maintain safe highways by providing penalties for dropping loads from vehicles on public highways.

The statute, however, exempts farm vehicles and municipal and state highway equipment from its provisions. These vehicles are excluded arbitrarily and without a rational basis. Morey v. Doud, 354 U.S. 457 (1957). The classification is not rationally related to a legitimate governmental interest. Frontiero v. Richardson, 411 U.S. 677 (1973). The purpose behind the law, the maintenance of safe highways, does not justify the legislative exclusion. Salyer Land Co. v. Tulare Lake Basin Water Storage District, 410 U.S. 719 (1973). Since all that is required to comply with the statute is to cover a load, the exemption of certain vehicles is arbitrary and irrational. Reed v. Reed, 404 U.S. 71 (1971).

It is submitted that the decision of the Supreme Court of New Hampshire fails to recognize that the exemption of certain classes of vehicles from the purview of the statute is arbitrary and unreasonable. The court upheld the exemptions even though the state has no interest in permitting any vehicle to drop any load upon a state highway. In Sproles v. Binford, 286 U.S. 374 (1932), this Court permitted exemptions in a highway use statute only where the state had a distinct public interest in the purpose behind the exemption. Since no such interest exists here, a substantial and important question is presented as to whether the statute violates the fourteenth amendment.

Respectfully submitted,

Richard G. Smith
Counsel for Appellant

Smith & Angelo
Seven Main Street
Jaffrey, New Hampshire 03452

Appendix A

[Copy of Judgment Below]

Appendix B

[Text of Statutes]

Appendix A

NOTICE: This opinion is subject to formal revision before publication in the New Hampshire Reports. Readers are requested to notify the Reporter, Supreme Court of New Hampshire, Supreme Court Building, Concord, New Hampshire, 03301, of any typograpical or other formal errors, in order that corrections may be made before the opinion goes to press.

Peterborough District Court
No. 7186

State of New Hampshire

v.

John G. Hadley

September 30, 1975

Warren B. Rudman, attorney general, and Peter W. Heed, under Supreme Court Rule 23 (Mr. Heed orally), for the State.

Smith & Angelo (Mr. Bruce R. Angelo orally) for the defendant.

KENISON, C.J. This appeal involves the constitutionality of RSA 249:51 (Supp. 1973), Spillage of Material. On September 25, 1974, the defendant received a summons for violating this statute by failing to cover a dump truck hauling gravel. Prior to trial he moved to dismiss the complaint alleging that the statute unreasonably exempted certain operators similarly situated and thus deprived him of the equal protection of the laws. See Morey v. Doud, 354 U.S. 457 (1957). The defendant moved that the constitutional question be transferred

to this court, and Brighton, J., so ordered. RSA 502-A:17 (Supp. 1973).

RSA 249:51 I (Supp. 1973) provides: "No vehicle shall be driven.....on any highway unless such vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking or otherwise escaping.....". RSA 249:51 II (Supp. 1973) provides: "No person shall operate on any highway any vehicle with any load unless said load and any covering thereon is securely fastened so as to prevent said covering or load from becoming loose, detached or in any manner a hazard to other users of the highway. Without limiting the foregoing provision, no person shall operate on any highway any open vehicle loaded with earth, sand, asphalt, stone, gravel or other particulate substance unless said vehicle is equipped with and said load is covered and secured by a close-fitting tarpaulin which prevents the escape of any substance from said load onto the highway." RSA 249:51 IV (Supp. 1973) states that these provisions "shall not apply to a local farmer transporting his own farm products or materials incidental to his farming operations where such transporting requires incidental use of a public highway.....". RSA 249:51 V (Supp. 1973) states that RSA 249:51 II "shall not apply to: (a) The operation of highway building equipment.....and motor vehicles used in the construction of highways provided that such equipment or motor vehicle is used within a highway construction zone....." or "(b) The operation of municipal and state highway maintenance equipment." This statute is derived from § 14-106 of the Uniform Vehicle Code (1968). Cf. Erwin v. State, 262 So. 2d 677 (Fla. 1972).

The fourteenth amendment requires that there be a rational relationship between the purpose of the statute and the classifications which it makes. Belkner v. Preston, 115 N.H. 15,

332 A. 2d 168 (1975). The leading case regarding highway safety classifications is Sproles v. Binford, 286 U.S. 374 (1932), in which the Court sustained a Texas statute which exempted from general limitations on vehicle size "implements of husbandry" and "highway building and maintenance machinery temporarily propelled or moved upon the public highways". The Court relied on the fact that "the movement [of such vehicles] would be relatively temporary and infrequent as compared with the ordinary uses of the highways by motor trucks". 286 U.S. at 392. In Aero Transit Co. v. Georgia Pub. Serv. Comm'n., 295 U.S. 285, 293 (1935), the Court indicated that the validity of exceptions to safety regulations would depend on such considerations as "the extent or regularity of the traffic thus excepted". Evidently, a legislature may exempt certain activity from regulation if the danger from the activity, due to its infrequency, is slight compared to other activity which is subject to regulation.

The exemption for farming operations is valid under Sproles v. Binford supra. The legislature could reasonably conclude that such activity creates significantly less danger than other traffic and that requiring the farmer to cover his load each time would impose a burden materially greater than that imposed on other operators. There is general recognition that such activity is different from ordinary traffic so that it may be entitled to special exemptions as well as subject to special regulation. See National Committee on Uniform Traffic Laws and Ordinances, Uniform Vehicle Code and Model Traffic Ordinance, §§ 12-215, 14-101 (1968).

The exemption of road construction equipment in construction zones has a rational basis. In highway construction zones motorists receive special notice of potential hazards and ordinarily are required to reduce their speed, thereby reducing the dangers against which the statute guards. Furthermore in

such zones it would be extraordinarily burdensome to require that vehicles be covered each time they moved. The exception for state and municipal maintenance equipment can rest on consideration of the nature of the work involved and on the opportunity for administrative control. Maintenance work may require frequent short trips, which would materially increase the burden of covering the load in comparison to other operators. It is important to note that this exemption relates primarily to the duty to cover vehicles carrying particulate matter. Public employees are still subject to prosecution for spilling material. The legislature could reasonably find that public operators are more likely to comply because they are subject to administrative control while private operators are not. Citizens are more likely to complain effectively about the operation of public vehicles than about private ones. Similarly law enforcement officers may challenge potentially dangerous practices of public vehicles through government channels, an alternative not available in the case of private operators. Although no case exactly in point has been found, the most relevant precedents support the challenged provisions. Exemptions of public vehicles from weight limits have frequently been sustained. State v. Seraphine, 266 Wis. 118, 62 N.W. 2d 403 (1954); Alexander v. State, 228 Ga. 179, 184 S.E. 2d 450 (1971); Department of Public Safety v. Freeman Ready-Mix Co., 292 Ala. 380, 295 So. 2d 242 (1974). In the present case the legislature could reasonably find that the exempted activities involve less danger and would bear a greater burden than traffic in general if subjected to the statute. Therefore RSA 249:51 (Supp. 1973) satisfies the command of the fourteenth amendment and is constitutional.

Remanded.

All concurred.

Appendix B

249:51 [New] Spillage of Material.

I. No vehicle shall be driven or moved on any highway unless such vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a roadway in cleaning or maintaining such roadway.

II. No person shall operate on any highway any vehicle with any load unless said load and any covering thereon is securely fastened so as to prevent said covering or load from becoming loose, detached or in any manner a hazard to other users of the highway. Without limiting the foregoing provision, no person shall operate on any highway any open vehicle loaded with earth, sand, asphalt, stone, gravel or other particulate substance unless said vehicle is equipped with and said load is covered and secured by a close-fitting tarpaulin which prevents the escape of any substance from said load onto the highway. [Amended 1973, 573:1, eff. Nov. 2, 1973.]

III. Any person who violates the provisions of this section shall be guilty of a violation if a natural person, or guilty of a misdemeanor if any other person. Any person shall be liable to the state or town for any damage done to the highway by spillage. [Amended 1973, 530:32, eff. at 11:59 P.M., Oct. 31, 1973.]

IV. The provisions of paragraphs I, II, and III of this section shall not apply to a local farmer transporting his own farm products or materials incidental to his farming operations where

such transporting requires incidental use of a public highway provided that such farmer shall not thereby be relieved of his duty to exercise reasonable care in carrying on such operations.

V. The provisions of paragraph II shall not apply to:

(a) The operation of highway building equipment as defined in RSA 259:1, Xii and motor vehicles used in the construction of highways provided that such equipment or motor vehicle is used within a highway construction zone as prescribed by the commissioner, public works and highways, provided that the operator of any such vehicle shall not thereby be relieved of his duty to exercise reasonable care.

(b) The operation of municipal and state highway maintenance equipment.

(c) The operation of any vehicle on a highway at speeds of less than thirty miles per hour. [Added 1973, 573:2, eff. Nov. 2, 1973.]

Source. 1965, 178:1. 1973, 530:32, eff. at 11:59 P.M., Oct. 31, 1973; 573:1, 2, eff. Nov. 2, 1973.

Amendments – 1973. Paragraph II: Chapter 573 added provisions relating to covering certain loads.

Paragraph III: Chapter 530:32 amended paragraph generally to conform provisions to new criminal code.

Paragraph V. Added by chapter 573.

502-A:17-a Transfers to Supreme Court.

In any criminal case or civil cause in any district court questions of law may be transferred to the supreme court in the same manner as that from the superior court under RSA 491: 17, provided that the district court justice hearing the case to be transferred shall, if either party request it, file as a part of the transferred case his findings in writing, stating the facts found and his rulings of law.

Source. 1967, 40:1. 1971, 507:3, eff. Sept. 4, 1971.
Amendments – 1971. Added proviso.

ANNOTATIONS

1. Effect of appeal

Whether evidentiary question was transferred to supreme court before, or after, appeal to superior court, effect of appeal of criminal conviction in district court to superior court was to vacate judgment of district court and divest it of further jurisdiction, and for the supreme court to rule upon the question transferred from the district court while the case was pending in the superior court would amount to unsolicited advice to superior court on a question that might never arise in the trial de novo there; state's motion to vacate transfer on ground that district court had no jurisdiction to transfer the exception after an appeal to superior court would thus be granted. State v. Hennessey (1970) 110 NH 447, 270 A2d 613.

2. State appeals

The state has no right to appeal an adverse ruling in a criminal case. State v. Greenwood (1973) 113 NH 727, 313 A2d 725.

3. Filing

Whether transfer of questions of law to supreme court was denied because case was placed in the mail a day after the last day for filing, that is, it was placed in the mail on judgment day, or denied in exercise of district courts statutory discretion, there was no abuse of discretion. Gallo v. Century Broadcasting (1974) 114 NH 810, 330 A2d 780.